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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

BARRY BRENNER,

Plaintiff and Appellant,

v.

COMMUNITY MEMORIAL  
HEALTH SYSTEMS, INC. et  
al.,

Defendants and  
Respondents.

2d Civil No. B291008  
(Super. Ct. No. 56-2015-  
00465611-CU-PO-VTA)  
(Ventura County)

Barry Brenner filed a medical malpractice lawsuit against Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Southern California Permanente Medical Group (collectively Kaiser Foundation), and other hospital defendants. After arbitration was completed, Brenner sought to amend the second amended complaint by naming four new “Kaiser” entities in place of Does 1-4. Kaiser Foundation specially appeared and moved to strike and quash service of summons on these new

entities. The trial court granted the motions. Brenner appeals the order striking the Doe amendments and quashing service of summons on the newly added entities. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Brenner is the special administrator for the estate of his wife, Rhona. Rhona was a Kaiser Foundation member. Kaiser Foundation contracts with hospitals and physicians in Ventura County to provide medical services to Kaiser Foundation members. Rhona was admitted into Community Memorial Hospital (CMH), a hospital contracted with Kaiser Foundation, for various conditions. She died 11 days later.

Brenner sued Kaiser Foundation, CMH, and others, alleging fraud, elder abuse, and wrongful death, among other things. Kaiser Foundation petitioned to compel binding arbitration, and the trial court granted the petition.

Kaiser Foundation filed a motion for summary judgment in the arbitration proceedings. The arbitrator granted summary judgment on all causes of action against Kaiser Foundation Health Plan and Kaiser Foundation Hospitals, and granted summary adjudication on all causes of action except for the wrongful death claim against Southern California Permanente Medical Group. Southern California Permanente Medical Group subsequently settled the wrongful death claim and was dismissed with prejudice.

After arbitration, Brenner sought leave to file the third amended complaint in the trial court. The proposed amended complaint omitted the Kaiser Foundation defendants and named four new “Kaiser” entities: Kaiser Permanente, Kaiser Permanente, Inc., Kaiser Permanente, LLP, and Kaiser Permanente, LLC. Kaiser Foundation Health Plan and Kaiser

Foundation Hospitals opposed Brenner's motion for leave to file the third amended complaint. They argued that Brenner named "nonexistent" Kaiser entities in an attempt to relitigate the case against Kaiser Foundation. The trial court denied leave to file the third amended complaint. Kaiser Foundation Health Plan and Kaiser Foundation Hospitals were subsequently dismissed with prejudice.

Meanwhile, Brenner also filed Doe amendments to the second amended complaint to add the four new "Kaiser" entities. After the court denied leave to file the third amended complaint and dismissed Kaiser Foundation, Kaiser Foundation specially appeared to file motions to quash service of summons on the new entities and to strike them from the second amended complaint. It argued that Brenner did not obtain leave for the Doe amendments, the four new "Kaiser" entities were "nonexistent" legal entities and could not be sued, and the Doe amendments were another attempt to relitigate against Kaiser Foundation. The trial court granted these motions and entered judgment dismissing the new Kaiser entities.

### **DISCUSSION**

Brenner contends the trial court erred when it struck the four new Kaiser entities from the second amended complaint and quashed service of summons on them. We disagree.

We review the trial court's order on the motions to strike and quash service of summons for abuse of discretion. (*Pacific Gas & Electric Co. v. Superior Court* (2006) 144 Cal.App.4th 19, 23; *Optical Surplus, Inc. v. Superior Court* (1991) 228 Cal.App.3d 776, 782.) The burden is on the appellant to demonstrate abuse of discretion. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) We will not reverse unless the court's decision

is arbitrary and capricious. (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314 (*Jennings*).)

When a plaintiff is ignorant of the name of a defendant at the time the complaint is filed, the plaintiff may designate a fictitious name in the complaint. (Code Civ. Proc.,<sup>1</sup> § 474.) “[W]hen [the] true name is discovered, the pleading . . . must be amended accordingly.” (*Ibid.*) “Whether [a Doe] amendment conforms to section 474, that is whether it is made in good faith or is otherwise proper, is, in either event, a matter which rests primarily with the trial court.” (*Gutierrez v. Superior Court* (1966) 243 Cal.App.2d 710, 723 (*Gutierrez*).)

Section 474 does not state in what manner such amendment is to be made; however, sections 472 and 473 sets forth the procedural requirements to amend a pleading. (*Gutierrez, supra*, 243 Cal.App.2d at p. 723 [noting that section 474 amendment must meet the timeline prescribed in section 472 or must otherwise require leave from the court].) Under section 472, the plaintiff may amend the pleading once without leave of the court before an answer or demurrer is filed or before the hearing on the issue of law raised in the demurrer. Otherwise, the party must obtain leave from the court to amend the pleading. (§ 473; *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612-613.) A trial court may “at any time in its discretion . . . [¶] . . . [¶] [s]trike out all or any part of any pleading not drawn or filed in conformity” with the law. (§ 436, subd. (b).)

Brenner does not demonstrate that the trial court abused its discretion when it determined that the Doe

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<sup>1</sup> Further unspecified statutory references are to the Code of Civil Procedure.

amendments did not conform to section 474. (*Gutierrez, supra*, 243 Cal.App.2d at p. 723.) Brenner filed the Doe amendments without leave from the trial court, despite already amending his complaint twice and requesting leave to file the third amended complaint against the same four new “Kaiser” entities. (§§ 472, 473, 474.) Kaiser claimed that these new entities were nonexistent legal entities. Brenner did not demonstrate otherwise. Nothing in the record shows the court acted arbitrarily or capriciously when it struck the Doe amendments and quashed service of summons on the new entities. (*Jennings, supra*, 81 Cal.App.4th at p. 1314.)<sup>2</sup>

After the case was fully briefed, Kaiser Foundation filed a motion for relief pursuant to section 923, requesting that we issue a stay of trial court proceedings related to Brenner’s motion for leave to file a fifth amended complaint. This proposed amended complaint attempts to add another Kaiser entity (“Kaiser Permanente, a partnership”).

We deny the motion because a stay order is unnecessary. The trial court has already determined that adding these Kaiser entities is improper—it struck the Doe amendments after concluding that there were no “general corporations, partnerships, LLCs, LLP[s] or LPs with the name ‘Kaiser Permanente.’” Brenner has not shown this conclusion was erroneous. As Brenner admits in his motion for leave to file the fifth amended complaint, “[i]f the Court of Appeal does not reverse the ruling of [the trial court] . . . then this motion would be moot as to the Kaiser Permanente defendant.”

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<sup>2</sup> In light of our decision, we need not address the other arguments on whether the trial court properly struck and quashed service of summons on the new entities.

**DISPOSITION**

The judgment is affirmed. Kaiser Foundation shall recover costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Kevin G. DeNoce, Judge

Superior Court County of Ventura

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